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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,596	03/23/2004	Howard W. Bongratz	Y3.0173	2454
29438	7590	03/23/2006	EXAMINER	
MATHEW R. P. PERRONE, JR. 210 SOUTH MAIN STREET ALGONGUIN, IL 60102-2639			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 03/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

*CU*

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,596	<b>Applicant(s)</b> BONGRATZ, HOWARD W.	
	<b>Examiner</b> David L. Sorkin	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-20 is/are pending in the application.  
4a) Of the above claim(s) 10-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2, 4-9 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-9 and 18-20, in the reply filed on 23 January 2006 is acknowledged. Applicant argues that "Two distinct filling and discharge means are required with this invention". If applicant statement is true, it is clear that the independent claim 10 is not solely directed to "this invention", as it does not require two distinct filling and discharge means, and instead is open to material being added and removed for a single opening, just like is common practice for kitchen blender. Applicant mentions that "gravity is the intended and primary force causing discharge"; however, this is not reflected in the claims.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1, 2, 4-9, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The new recitation "the cover being removable for the batch blender and the lifting assembly" is considered new matter. It is clear from the arc double headed arrow of instant Fig. 4 that the cover pivots to be removable from the top opening of the receiver, but that the cover remains attached to the batch blender an mixing assembly.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Bohle (US 5,090,815). Bohle ('815) discloses a variable position batch blender assembly comprising a batch blender being movably mounted with a hydraulic lift assembly (see col. 4, line 56-65); the blender having a cover (6) and a receiver (2); and the blender having a filling means (see col. 6, lines 53-57) and a discharge means (22,23); the lifting assembly supports the blender (see Fig. 1; col. 4, lines 56-59); the batch blender has agitating means (3 and/or 3A) mounted in the receiver; the agitator has at least one mixing tool (for example 53) secured in the interior of the receiver; and the receiver has a discharge mechanism (22,23) mounted therein. The assembly would be capable of being used in the recited manner.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 2, 4-9, 19 and 20 have been considered but are moot in view of the new grounds of rejection.

6. Regarding claim 18, as seen in Figs. 1 and 5, of Bohle ('815), mixing tools (for example 53) are "secured in" the receiver (6). While the mixing tool 53 is secured to shaft 55, this does not negate the disclose that the mixing tool 53 is secured in the receiver (6).

### ***Conclusion***

7. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS